

The initial question regarding the propriety of awarding attorney's fees in a case such as this is whether Plaintiffs can be considered the "prevailing party." *Casey v. City of Cabool, Mo.*, 12

F.3d 799, 804 (8th Cir. 1993). “The touchstone of the prevailing party inquiry,” the Supreme Court has recently affirmed, is “the material alteration of the legal relationship of the parties....” *Sole v. Wyner*, 551 U.S. 74, 82 (2007) (quoting *Texas State Teachers Ass’n v. Garland Independent School Dist.*, 489 U.S. 782, 792-93 (1989)). Plaintiffs contend that they should be deemed a prevailing party in light of the February 1, 2010 TRO [ECF No. 24]. Generally, a plaintiff “who gains a preliminary injunction does not qualify for an award of counsel fees under § 1988(b) if the merits of the case are ultimately decided against her.” *Sole*, 551 U.S. at 86 (2007). The Eighth Circuit explored this issue further in *Northern Cheyenne Tribe v. Jackson*, 433 F.3d 1083, 1086 (8th Cir. 2006) and held that the grant of a mere preliminary injunction can confer prevailing party status such as where “it alters the course of a pending administrative proceeding and the party’s claim for [sic] permanent injunction is rendered moot by the impact of the preliminary injunction.” *Id.* at 1086.

The merits of this case have been decided against Plaintiffs. They are not prevailing parties under the statute. They are not, therefore, entitled to attorney’s fees.

Plaintiffs’ new Motion for Reconsideration argues, some five plus months after the judgment, that the Court erred in granting summary judgment for Defendant. To the contrary, the Court’s ruling was guided by the Eighth Circuit Court of Appeals’ decision in *Austell v. Springer*, 690 F.3d 929 (8<sup>th</sup> Cir. 2012). Plaintiffs’ argument otherwise is without merit. Plaintiffs did not seek reconsideration at the time of the judgment, nor did they appeal entry of judgment against them.

As to Plaintiff’s request for reconsideration of the denial of an award of attorney’s fees, the Court is unpersuaded that they are entitled to attorney’s fees.

even though judgment was entered in favor of Defendant under a qualified immunity theory. Plaintiffs did not prevail on the merits, and are therefore not entitled to an award of attorney's fees

Accordingly,

**IT IS HEREBY ORDERED** that Plaintiffs' Motion for Reconsideration, [Doc. No.191], is denied.

Dated this 18th day of November, 2014.

A handwritten signature in cursive script, reading "Henry Edward Autrey", written in black ink.

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HENRY EDWARD AUTREY  
UNITED STATES DISTRICT JUDGE